

State of Colorado Department of Personnel & Administration

State of Colorado Price Agreement Number 68008YYY10P/WSCA

STATE OF COLORADO MASTER PRICE AGREEMENT

THIS MASTER PRICE AGREEMENT, dated this 6th day of June, 2008, by and between the State of Colorado, for the use and benefit of the Department of Personnel & Administration, located at 633 17th Street, Suite 1520, Denver, Colorado 80202 (the "**State**"), and U.S. Armor Corporation, located at 16433 Valley View Avenue, Cerritos, California 90703 ("**Vendor**" or "**Manufacturer**"), collectively, the "**Parties**".

This Master Price Agreement ("Price Agreement") is issued by the State of Colorado to the Vendor named above for the purchase of new bullet-resistant and stab-resistant body armor on an as-needed basis by State of Colorado agencies, Institutions of Higher Education, and Political Subdivisions and by other Purchasing Entities, as defined below. This Price Agreement is a cooperative procurement conducted on behalf of the Western States Contracting Alliance (WSCA). Colorado is the Lead State, as defined below, for this Price Agreement.

1. Definitions

The following terms as used in this Price Agreement shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1 "**Distributor**" means a company that has a contractual relationship with the Vendor to market and sell the Vendor's products to Purchasing Entities. To be considered a Distributor under this Master Price Agreement, a company must have been named by the Vendor as a Distributor for a specific state(s) and have executed a Manufacturer/Distributor Assignment for Company form (**Exhibit G**) with the Vendor. The list of the Vendor's Distributors under this Agreement is attached as **Exhibit E**, Distributors by State.
- 1.2 "**Lead State**" means the State that conducted this cooperative Solicitation and that will centrally administer this resulting Price Agreement. Colorado is the Lead State for this Price Agreement.
- 1.3 "**Offer**" or "**Bid**" means the offer submitted by the Vendor in response to State of Colorado Competitive Negotiation for Body Armor, Solicitation Number CN-BODYARMOR-SM-01-08. "**Offeror**" or "**Bidder**" similarly means the Vendor that submitted the Offer or Bid.
- 1.4 "**Participating Addendum**" means a bilateral agreement executed by the Vendor and a Participating State, or a Political Subdivision with the consent of its State Purchasing Official, that clarifies the operation of the Price Agreement for the State concerned (such as ordering procedures specific to that state) and may add other state-specific requirements.
- 1.5 "**Participating State**" means a member of the Western States Contracting Alliance (WSCA) that has indicated its intent to participate in this Price Agreement by executing a Participating Addendum or by using any other method provided by WSCA procedures, or any non-member state authorized by WSCA to be a party to this Price Agreement through execution of a Participating Addendum.
- 1.6 "**Permissive Price Agreement**" means a Price Agreement wherein a Purchasing Entity may make purchases against the Price Agreement without using the formal purchasing procedures that would normally be required for such a purchase by that Entity's statutes or regulations (for example, a

formal solicitation for competitive bids). Additionally, under a Permissive Price Agreement a Purchasing Entity may satisfy its requirements without using the Price Agreement, so long as the Entity follows applicable procurement statutes and regulations.

- 1.7 **"Political Subdivision"** means a county, city, school district, law enforcement authority, special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.
- 1.8 **"Price Agreement", "Agreement", "Master Price Agreement", or "Contract"** means this cooperative agreement for purchase of bullet-resistant and stab-resistant body armor on an as-needed basis, which has resulted from award of the Solicitation conducted on behalf of the Western States Contracting Alliance (WSCA). This Agreement is between the Lead State and the awarded Vendor. The Solicitation has resulted in awards to multiple vendors and, therefore, multiple Price Agreements. Depending on context, "Contract" may also refer to purchase orders, other commitment documents, or other types of agreements referred to in this Price Agreement.
- 1.9 **"Principal Representative" or "WSCA Contract Administrator"** means the individual in the State of Colorado State Purchasing Office who has been designated in the "Representatives" section in this Price Agreement, below.
- 1.10 **"Purchasing Entity"** means a Participating State or another legal entity, such as a Political Subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in the Solicitation. Unless otherwise limited in the Solicitation, in this Agreement, or in a Participating Addendum, Political Subdivisions of Participating States are Purchasing Entities authorized to purchase the goods and/or services described in this Agreement.
- 1.11 **"Solicitation"** means State of Colorado Competitive Negotiation for Body Armor, Solicitation Number CN-BODYARMOR-SM-01-08.
- 1.12 **"WSCA"** means the Western States Contracting Alliance, which is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Note that obligations under this Agreement are limited to those Participating States who have signed (and not revoked) an Intent to Participate or who have executed a Participating Addendum where contemplated by the Solicitation.

BASIC MASTER PRICE AGREEMENT TERMS

2. General

- 2.1 This Price Agreement is issued by the State of Colorado to the Vendor named above for the purchase of new bullet-resistant and stab-resistant body armor on an as-needed basis by State of Colorado agencies, Institutions of Higher Education, and Political Subdivisions and by other Purchasing Entities. This Price Agreement is a cooperative procurement conducted on behalf of the Western States Contracting Alliance (WSCA). Colorado is the Lead State for this Price Agreement.
- 2.2 The Vendor shall provide the goods described in **Exhibit A**, Price List, in compliance with the "Body Armor Specifications and Requirements" described in **Exhibit B**.
- 2.3 No specific volume of purchases against this Agreement is guaranteed by the State or by any other Purchasing Entity.
- 2.4 The Vendor is the manufacturer of the goods to be purchased under this Price Agreement.

3. Nature of Agreement; Roles of Participants

- 3.1 This Master Price Agreement is the primary agreement relating to the WSCA cooperative procurement for body armor. The State of Colorado issued and awarded the solicitation, and is the Lead State for the Agreement; therefore, it is the signatory on this Agreement. Although this is the Master Agreement covering purchases between the Parties, some of the terms herein are specific to purchases made by State of Colorado agencies only. Those Colorado-specific terms should be apparent by their context.
- 3.2 Purchasing Entities will indicate their intent to participate in this Price Agreement by executing a Participating Addendum with the Vendor or by using any other method provided by WSCA procedures. The Participating Addendum clarifies the operation of the Price Agreement for the State concerned (such as ordering procedures specific to that Purchasing Entity) and may add other state-specific requirements. A sample Participating Addendum is attached to this Master Price Agreement as **Exhibit F**.
- 3.3 The terms and conditions contained in any Participating Addendum shall apply to the purchases of the Purchasing Entity that executed the Participating Addendum. Such terms and conditions shall take precedence over this Price Agreement as they relate to those purchases. No terms or conditions of any Participating Addendum shall take precedence over the terms and conditions of any other Participating Addendum or over this Price Agreement except as they relate to those purchases.
- 3.4 Purchasing Entities in the Participating States will issue orders with Distributors, using whichever purchase and payment instruments the Entity is authorized to use. The ordering entity will be responsible to conduct its own order expediting and follow-up, and is responsible for payment.
- 3.5 Issues relating to Compliance with Applicable Law and Venue are addressed in the sections below with those titles.

4. Performance Standard

Vendor warrants that (a) goods or services provided under this Price Agreement shall meet the description in **Exhibit A**, Price List, and **Exhibit B**, Body Armor Specifications and Requirements, (b) there are no pending or threatened suits, claims, or actions of any type with respect to the goods or services provided and (c) the goods or services shall be free and clear of any liens, encumbrances, or claims arising by or through Vendor or any party related to Vendor.

5. Term of Price Agreement

The initial term of this Price Agreement shall be effective upon final execution by the Parties (the "Effective Date") and extend through May 31, 2009. The Price Agreement may be extended beyond the initial term for two (2) optional renewal terms of up to one year each, upon mutual agreement of the Parties. Such extensions will be made through execution by the Parties of a written amendment to this Price Agreement.

6. Pricing

Pricing shall remain firm for the first 12 months (Initial Term) of the Price Agreement and no change in the Vendor's Price List (**Exhibit A**) will be accepted during that time. Thereafter, only one increase will be allowed in any 12-month period (during the option years). Any such price increase request shall be made to the State's Principal Representative named herein in writing 30 days prior to the anticipated increase. Increases shall become effective upon approval by the State. Documentation that demonstrates the cause of any increase shall be supplied with the Vendor's request and will verify that the requested price increase is general in scope and not applicable just to this multi-state Price Agreement. Orders placed prior to the effective date of any price adjustment will be honored at the old Price Agreement price.

No volume of purchases against this Agreement is guaranteed by the State.

7. New NIJ Body Armor Standards

- 7.1 The National Institute of Justice (NIJ) is currently developing revised standards for bullet-resistant body armor, to replace the 2005 Interim Requirements for Bullet-Resistant Body Armor. At such time as NIJ publishes a list of armor that complies with the new standards, the State reserves the right to add products, at its option, to this Price Agreement. The addition of such products would be accomplished through price negotiation with the Vendor.
- 7.2 At some point during the term of this Agreement, the State may conclude that the NIJ-published list of compliant armor under the new standards has become extensive enough that issuance of a new solicitation would be advantageous for the State and for WSCA, the State may choose to exercise its termination rights under the Termination for Convenience section below, and issue a new solicitation.

8. Permissive Price Agreement

This is a Permissive Price Agreement, in Colorado, throughout the initial term of the Agreement (through May 31, 2009). The State may continue this as a Permissive Price Agreement or, at its option, change it to a Mandatory Price Agreement for the first and/or second option years of the Agreement. Other Participating States may individually deem this as a Permissive or a Mandatory Price Agreement, at their option.

9. WSCA Terms and Conditions

The Western States Contracting Alliance's (WSCA's) Standard Contract Terms and Conditions are attached to this Price Agreement as **Exhibit C**, and incorporated herein by reference. Those WSCA Terms and Conditions (**Exhibit C**) are subject to the Order of Precedence clause, below.

10. Order of Precedence

The provisions of this Price Agreement shall govern the relationship of the State and Vendor. In the event of conflicts or inconsistencies between this Price Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) This Price Agreement, pages 1 to 16.
- (b) Exhibit B, Body Armor Specifications and Requirements
- (c) Exhibit C, Western States Contracting Alliance (WSCA) Standard Contract Terms and Conditions
- (d) Exhibit F, Sample Participating Addendum
- (e) Exhibit A, Price List
- (f) Exhibit E, Distributors by State
- (g) Exhibit G, Manufacturer/Distributor Assignment for Company
- (h) Exhibit D, State of Colorado Price Agreement Quarterly Volume Report

The precedence of Participating Addenda or purchase and payment instruments that may be issued or executed in relation to this Master Price Agreement is addressed in the Section above titled "Nature of Agreement; Roles of Participants".

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

11. Billing/Payment Procedure

- 11.1. The State shall establish billing procedures and pay Vendor or its Distributor the Agreement price for Goods delivered, inspected, and accepted pursuant to all the terms and conditions of this Price Agreement. Vendor or its Distributor shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the State. Payments made by the

State to the Vendor or its Distributor in error for any reason including, but not limited to, overpayments or improper payments may, at the State's sole discretion, be recovered from Vendor or its Distributor by deduction from subsequent payments for purchases made by the State under this Price Agreement or other contracts or grants between the State and the Vendor or its Distributor or by other appropriate methods.

- 11.2 The Vendor or its Distributor shall accept the State's Procurement Card, or any similar payment instrument, as an accepted method of purchase and payment against this Price Agreement.
- 11.3. The State shall make payment in full with respect to each invoice within forty-five (45) days of receipt thereof; provided that the amount invoiced represents Goods and/or Services which have been accepted by the State and the form of the invoice is acceptable to the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning with the forty-sixth (46th) day at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the State has delivered to Vendor or its Distributor notice of a good faith dispute. Vendor or its Distributor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days' interest to be paid and the applicable interest rate.

12. Inspection and Acceptance

The State reserves the right to inspect Goods provided under this Price Agreement at all reasonable times and places during the term of this Agreement. If any of the Goods does not conform to Price Agreement requirements, the State will require Vendor, directly or through its Distributor, to promptly provide the Goods again in conformity with Agreement requirements, at no additional cost to the State.

This remedy shall in no way limit the remedies available to the State in other provisions of this Price Agreement or remedies otherwise available in equity or at law, including the Uniform Commercial Code ("UCC"), all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

13. Reporting

- 13.1 Quarterly Reports for Colorado: Using the attached State of Colorado Price Agreement Quarterly Volume Report form (**Exhibit D**), the Vendor shall submit a quarterly report for cumulative sales made under this Price Agreement to Purchasing Entities within Colorado. This volume report shall be submitted to:

Colorado State Purchasing Office
Attn: Christine Oberman
Email: christine.oberman@state.co.us
or
FAX: (303) 866-6016

These Quarterly Reports for Colorado shall be submitted according to the following schedule:

Quarterly Reporting Schedule	Due Dates
July through September	October 15
October through December	January 15
January through March	April 15
April through June	July 15

- 13.2 Quarterly Reports for WSCA: The Vendor shall submit a quarterly report for cumulative sales made under this Price Agreement to all Purchasing Entities (in all states). There is not a standardized format for this report. It shall be submitted to the WSCA Contract Administrator listed below, and

upon request to any Participating State, showing the quantities and dollar volume of purchases, broken out by each Purchasing Entity. This volume report shall be submitted to:

Colorado State Purchasing Office
Attn: Christine Oberman
Email: christine.oberman@state.co.us

or

FAX: (303) 866-6016

These Quarterly Reports for WSCA shall be submitted according to the following schedule:

Quarterly Reporting Schedule	Due Dates
July through September	October 15
October through December	January 15
January through March	April 15
April through June	July 15

- 13.3 **Database for WSCA:** The Vendor shall keep and maintain a database, in MS Access or MS Excel, throughout the term of the Price Agreement, covering all purchases made against this Price Agreement by all Purchasing Entities (in all states). The database shall include the following information for each purchase:

- Purchasing Entity Name
- NIJ Compliant Model Number
- Catalog Number Used for Marketing (if different from NIJ Compliant Model Number)
- Style (concealable or tactical)
- Threat Level
- Serial Number
- Size(s)
- Number of Units Purchased
- Manufacture Date
- Date Delivered to Customer

The database shall be updated as products are delivered and a copy given to the State every six (6) months by the following Due Dates: November 30 and May 31. The database will also be delivered on an ad hoc basis upon request by the State. The database shall be given to the State on a CD-RW disc(s).

- 13.4 The Vendor will provide ad hoc reports to any State of Colorado agency requesting information about usage for their agency against the Price Agreement. Such request will be made in a manner as not to be burdensome to the Vendor.
- 13.5 Failure of the Vendor to submit reports as specified may result in suspension of this Price Agreement by the State until reports are completed and received or may result in cancellation of this Price Agreement. In addition, failure of the Vendor to submit reports as specified may impact future eligibility to compete for State or WSCA price agreements.

14. Rights in Data, Documents, and Computer Software

- 14.1 Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Vendor in the performance of its obligations under this Price Agreement (the "Work Product"), shall be the exclusive property of the State and all Work Product shall be delivered to the State by Vendor upon completion, termination, or cancellation of this Price Agreement. The rights of the State with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work.

- 14.2 Vendor shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Vendor's obligations under this Price Agreement, without the prior written consent of the State. The rights of the State with respect to such property shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

15. Maintenance, Inspection and Monitoring of Records

- 15.1 Vendor shall maintain a complete file of all records that are necessary to properly account for the payments made to the Vendor for costs authorized by this Price Agreement and the Vendor shall maintain any other documents, communications, and other written materials or electronic media, files or communications, which pertain to the delivery of Goods under this Price Agreement. Such records shall be maintained for a period of four (4) years after the date of termination of this Price Agreement or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the State or Federal government, any other Purchasing Entity, or WSCA, has begun but is not completed or audit findings have not been resolved after a four (4) year period, such materials shall be retained until the resolution of the audit findings.
- 15.2 Vendor shall permit the State or Federal Government, any other Purchasing Entity, WSCA, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Vendor's records during the term of this Price Agreement and for a period of four (4) years following termination of this Price Agreement or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Vendor's performance hereunder. Such access will be during normal business hours or by appointment.

16. Confidentiality of State Records and Information

- 16.1 Vendor and Distributor acknowledge that it may come into contact with confidential information in connection with this Price Agreement or in connection with the performance of its obligations under this Price Agreement, including but not limited to, personal records and information of individuals, in particular names and information of law enforcement personnel who are fitted for and provided body armor. It shall be the responsibility of Vendor and Distributor to keep all State records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Vendor or Distributor made by a third party who is not an authorized party to this Price Agreement shall be immediately forwarded to the State's Principal Representative for resolution.
- 16.2 Vendor and Distributor shall notify all of its agents, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Vendor and Distributor shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by Vendor, Distributor, or its agents in any way, except as authorized by this Price Agreement and as approved by the State. State information shall not be retained in any files or otherwise by Vendor, Distributor, or its agents, except as set forth in this Price Agreement and approved by the State. Disclosure of State records or information may be cause for legal action against Vendor, Distributor, or its agents. Defense of any such action shall be the sole responsibility of Vendor.

17. Litigation Reporting

Vendor or Distributor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Goods provided or Vendor's or Distributor's performance under this Price Agreement, which has been filed in any court or administrative agency, shall deliver copies of such

document to the State's Principal Representative or, in absence of such designation, to the chief executive officer of the department executing this Price Agreement on behalf of the State.

18. Safety Notifications

- 18.1 Vendor shall notify the State's Principal Representative, and all Purchasing Entities that have ordered against this Price Agreement, of recall notices, warranty replacements, safety notices, or any other applicable notice regarding the body armor being sold under this Agreement. Such notice shall be given in writing within thirty (30) calendar days of the date the Vendor becomes aware of, or issues, such notices.
- 18.2 Vendor shall notify the State's Principal Representative by phone IMMEDIATELY of any recall, safety notice, warranty replacements, or issues regarding the safety of officers. Such phone notification shall be followed by written notification from Vendor to the State within ten (10) calendar days of the date the Vendor becomes aware of, or issues, such notices. Failure to notify the State of such notices as required herein may result in the immediate cancellation of the award, at the option of the State.

19. Conflict of Interest.

- 19.1 During the term of this Price Agreement, Vendor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Vendor's obligations under this Price Agreement.
- 19.2 Additionally, Vendor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Vendor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Vendor's obligations to the State in accordance with the terms and conditions of this Price Agreement, without the prior written approval of the State.
- 19.3. In the event that Vendor is uncertain whether the appearance of a conflict of interest may reasonably exist, Vendor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the Price Agreement.
- 19.4. Vendor, its Distributors, and any subcontractors permitted under the terms of this Price Agreement, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Vendor, its Distributors, or any permitted subcontractor shall participate in the selection, or in the award or administration of a Price Agreement or subcontract supported by Federal, State, or local funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) an organization, which employs, or is about to employ, any of the above,
- has a financial or other interest in the firm selected for award. Vendor's or any Distributor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Vendor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

20. Warranties.

- 20.1 Panel Warranty: The bullet- or stab-resistant protective panel portion of the body armor sold under this Price Agreement shall be warranted by the Vendor for a minimum of five (5) years, from the date of delivery to the Purchasing Entity, to meet the Threat Level of protection at which it was found by the National Institute of Justice (NIJ) to comply with the NIJ 2005 Interim Requirements for Bullet-Resistant Body Armor and/or the NIJ Standard-0115.00, Stab Resistance of Personal Body Armor (whichever is applicable). This warranty assumes the product has not been subject to misuse, abuse, unauthorized repair or alteration, or damage. The bullet- or stab-resistant protective panels sold under this Price Agreement shall be warranted by the Vendor to be free from defects in materials and workmanship for a period of five (5) years from the date of delivery to the Purchasing Entity. Any product that fails to meet this warranty shall be replaced by the Vendor, at no cost to the Purchasing Entity.
- 20.2 Carrier Warranty: The carrier portion of the body armor sold under this Price Agreement shall be warranted by the Vendor for a minimum of (1) year, from the date of delivery to the Purchasing Entity, to be free from defects in materials and workmanship. This warranty assumes the product has not been subject to misuse, abuse, unauthorized repair or alteration, or damage. Any product that fails to meet this warranty shall be replaced by the Vendor, at no cost to the Purchasing Entity.
- 20.3 General: All Goods furnished under this Price Agreement shall be new and in good working order, free from defects in materials or workmanship, installed properly and in accordance with manufacturers' recommendations or other industry standards and will function in a failure-free manner. Vendor shall repair or replace, at its option, any Goods that fail to satisfy this warranty.

21. Licenses, Permits, and Responsibilities

Vendor certifies that, at the time of entering into this Price Agreement, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Goods covered by this Price Agreement. Vendor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Price Agreement, without reimbursement by the State or other adjustment in Price Agreement price. Additionally, all employees of Vendor performing services under this Price Agreement shall hold the required licenses or certification, if any, to perform their responsibilities. Vendor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Vendor to properly perform this Price Agreement, shall be deemed to be a default by Vendor and grounds for termination of this Price Agreement by the State.

22. Tax Exempt Status

Vendor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The State also is not liable for any Vendor franchise or income related tax. No taxes of any kind shall be charged to the State.

23. Legal Authority

Vendor warrants that it possesses the legal authority to enter into this Price Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Price Agreement and to bind Vendor to its terms. Vendor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado, and to the personal jurisdiction of the courts in the Participating States. The person(s) executing this Price Agreement on behalf of Vendor warrant(s) that such person(s) have full authorization to execute this Price Agreement.

24. Compliance with Applicable Law

Vendor and its Distributors shall at all times during the execution of this Price Agreement strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and laws of Participating States, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this Price Agreement. Vendor also shall require compliance with such laws and regulations by subcontractors under any subcontracts permitted under this Price Agreement.

REMEDIES

25. Remedies

In addition to any other remedies provided for in this Price Agreement, and without limiting the remedies otherwise available at law or in equity, the State may exercise the following remedial actions if Vendor substantially fails to satisfy or perform the duties and obligations in this Price Agreement. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by Vendor. These remedial actions are as follows:

- (a) Suspend Vendor's performance pending necessary corrective action as specified by the State, without Vendor's entitlement to adjustment in price/cost or schedule. Furthermore, at the State's option, a directive to suspend may include suspension of this entire Price Agreement or any particular part of this Price Agreement that the State determines in good faith would not be beneficial or in the State's best interests due to Vendor's substantial non-performance. Accordingly, the State shall not be liable to Vendor for costs incurred after the State has duly notified Vendor of the suspension of performance under this provision, and Vendor shall promptly cease performance and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Vendor until the necessary Services or Goods or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this Price Agreement of employees or agents of Vendor identified by the State, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this Price Agreement the State deems to be contrary to the public interest or not in the best interests of the State;
- (d) Deny payment for those Services or obligations which have not been performed and/or Goods which have not been provided and which, due to circumstances caused by Vendor, cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- (e) Terminate this Price Agreement for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously. These remedies shall in no way limit the remedies available to the State in other provisions of this Price Agreement or remedies otherwise available in equity or at law, including the Uniform Commercial Code ("UCC"), all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

26. Termination for Convenience

- 26.1 Either Party may terminate this Price Agreement in whole or in part upon sixty (60) days prior written notice. The Vendor remains responsible for providing the reports required in this Price Agreement. Further, any Participating State may terminate its participation upon 30 days written notice. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of a Purchasing Entity to indemnification by the Vendor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Upon receipt of written notice, Vendor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Vendor shall stop work to the extent specified. Vendor also shall

terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Vendor under this Price Agreement shall, at the option of the State, be delivered by Vendor to the State and shall become the State's property. The State may direct Vendor to assign Vendor's right, title, and interest under terminated orders or subcontracts to the State. Vendor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the Price Agreement terms.

- 26.2 If this Price Agreement is terminated for cause, or due to the fault of the Vendor, the Termination for Default/Cause provision shall apply.

27. Termination for Default/Cause

If Vendor refuses or fails to perform any of the provisions of this Price Agreement with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this Price Agreement, the State may notify Vendor in writing of such non-performance. If Vendor fails to promptly correct such delay or non-performance within the time specified, the State may, at its option, terminate this entire Price Agreement or such part of this Price Agreement as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall only reimburse Vendor for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished documents, data, studies, research surveys, reports, other materials prepared by Vendor, or materials owned by the State in the possession of Vendor, at the option of the State, shall be returned immediately to the State or retained by the State as its property. At the State's option, Vendor shall continue performance of this Price Agreement to the extent not terminated, if any, and shall be liable for excess costs incurred by the State in procuring from third parties replacement services or substitute goods as cover. Notwithstanding any remedial action by the State, Vendor also shall remain liable to the State for any damages sustained by the State by virtue of any breach by Vendor and the State may withhold any payment to Vendor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Vendor is determined. Upon termination by the State, Vendor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Vendor in which the State has an interest. Further, the State may withhold amounts due to Vendor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods or services. Any action taken by the State hereunder or pursuant to section 26 shall not be cause for Vendor to terminate this Price Agreement for default or material breach. If, after termination by the State, it is determined for any reason that Vendor was not in default or that Vendor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this Price Agreement had been terminated for convenience, as described herein. These remedies shall in no way limit the remedies available to the State in other provisions of this Price Agreement or remedies otherwise available in equity or at law, including the Uniform Commercial Code ("UCC"), all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures.

28. Insurance

- 28.1 The Vendor shall obtain, and maintain at all times during the term of this Price Agreement, insurance in the following kinds and amounts:
- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Vendor's employees acting within the course and scope of their employment.
 - b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$10,000,000 each occurrence;
- ii. \$10,000,000 general aggregate;
- iii. \$10,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

If any aggregate limit is reduced below \$10,000,000 because of claims made or paid, the Vendor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

28.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the Price Agreement will be primary over any insurance or self-insurance program carried by the State of Colorado.

28.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

28.4 The Vendor will require all insurance policies in any way related to the Price Agreement and secured and maintained by the Vendor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

28.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

28.6 The Vendor shall provide certificates showing insurance coverage required by this Price Agreement to the State within 7 business days of the effective date of the Price Agreement, but in no event later than the commencement of the services or delivery of the goods under the Price Agreement. No later than 15 days prior to the expiration date of any such coverage, the Vendor shall deliver to the State certificates of insurance evidencing renewals thereof. At any time during the term of this Price Agreement, the State may request in writing, and the Vendor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

29. Governmental Immunity

Notwithstanding any other provision of this Price Agreement to the contrary, no term or condition of this Price Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Governmental Immunity Act, section 24-10-101, *et seq.*, C.R.S., as amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of the Act, sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

30. Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

31. State Liability Regarding Use of Agreement

The State shall have no responsibility or liability, direct or indirect, for or to a state, county, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality – or any other Purchasing Entity - which is not a government agency, department, division, unit, or other office of the State of Colorado, with respect to the use of or products ordered pursuant to this Price Agreement.

32. Force Majeure

Neither Vendor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Price Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this Price Agreement "force majeure" means: acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

MISCELLANEOUS PROVISIONS

33. Representatives

Each individual identified below is the Principal Representative of the designating Party. All notices required to be given to a Party pursuant to this Price Agreement shall be hand delivered with receipt required or sent by certified or registered mail to such Party's Principal Representative at the address for such Party set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent.

NOTE: The Principal Representative for the State, listed below, shall also be known as the "WSCA Contract Administrator".

For the State:

Christine Oberman, Purchasing Agent
State of Colorado, State Purchasing Office
633 17th Street, Suite 1520
Denver, Colorado 80202
E-Mail: christine.oberman@state.co.us
Voice: 303-866-6146
Fax: 303-866-6016

For Vendor:

Name: Stephen E. Armellino
Title: President
Address: 16433 Valley View Avenue
Cerritos, CA 90703
Telephone: (562) 207-4240

34. Assignment and Successors

Vendor's rights and obligations under this Price Agreement shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Vendor may assign the right to receive payments from the State pursuant to section 4-9-318, C.R.S. Any subcontracts, subcontractors, or Distributors consented to by the State shall be made subject to the requirements, terms and conditions of this Price Agreement. Vendor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted Services. Vendor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this Price Agreement, including an obligation of the subcontractor to indemnify the State as is required under Section 30 in this Price Agreement.

35. Third Party Beneficiaries

The enforcement of the terms and conditions of this Price Agreement and all rights of action relating to such enforcement shall be strictly reserved to the State and Vendor, except that warranties for Goods or Services in this Price Agreement shall pass through to and be enforceable by employees, agents, and representatives of the Purchasing Entity who utilize such Goods or Services. It is the express intention of the State and Vendor that any third party entity, other than an employee, agent, or representative of the Purchasing Entity, receiving Goods, Services, or benefits under this Price Agreement shall be deemed an incidental beneficiary only.

36. Severability

To the extent this Price Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Price Agreement, the terms of this Price Agreement are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

37. Waiver

The waiver of any breach of a term, provision, or requirement of this Price Agreement, whether explicitly or by lack of enforcement, shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

38. Captions and Headings

The captions and headings in this Price Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

39. Entire Understanding

This Master Price Agreement, together with its exhibits and any Participating Addenda that are subsequently executed with the Vendor by Purchasing Entities, is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing, or in an executed Participating Addendum. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed by the Parties.

40. Survival of Certain Price Agreement Terms

Notwithstanding anything herein to the contrary, all terms and conditions of this Price Agreement, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of the Price Agreement, shall survive such termination date and shall be enforceable by the State in the event of the Vendor's failure to perform or comply as required.

41. Modification and Amendment

- 41.1 This Price Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Price Agreement on the effective date of such change, as if fully set forth herein.
- 41.2 Except as specifically provided in this Price Agreement, no modification of this Price Agreement shall be effective unless agreed to in writing by both parties in an Amendment to this Price Agreement, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

42. Venue

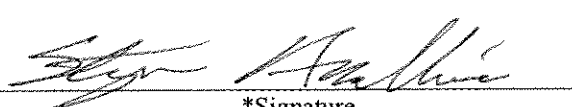
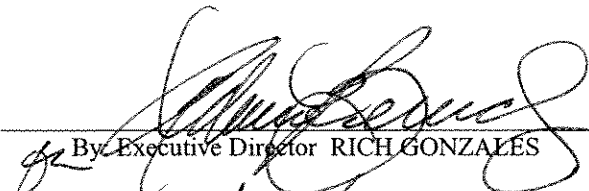
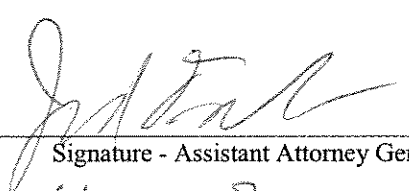
Venue for any action related to the construction and effect of this Price Agreement shall be in the City and County of Denver, Colorado. Venue for any action related to the effect of any Participating Addendum, or

related to any order placed against this Price Agreement, shall be in the relevant Participating State. Such Participating Addendum or order may further specify venue for that action.

PRICE AGREEMENT SIGNATURE PAGE


THE PARTIES HERETO HAVE EXECUTED THIS PRICE AGREEMENT

*Persons signing for Vendor hereby swear and affirm that they are authorized to act on Vendor's behalf and acknowledge that the State is relying on their representations to that effect.

<p>VENDOR U.S. Armor Corporation</p> <p>By: Stephen E. Armellino Title: President</p> <p> *Signature</p> <p>Date: <u>06/16/2008</u></p>	<p>STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Department of Personnel & Administration Division of Finance and Procurement</p> <p> By: Executive Director RICH GONZALES</p> <p>Date: <u>6/19/08</u></p>
<p>2nd Vendor Signature (if needed):</p> <p>By: Name of Authorized Individual Title: Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p> By: _____ Signature - Assistant Attorney General</p> <p>Date: <u>6/24/08</u></p>

ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Vendor is not authorized to begin performance until such time. If Vendor begins performing prior thereto, the State of Colorado is not obligated to pay Vendor for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: </p> <p>Date: <u>6/26/08</u></p>
